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Supreme Court of the United States

OCTOBER TERM, 1945

No. [redacted] 42

No. [redacted] 43

IN THE MATTER

of

AMERICAN FUEL & POWER COMPANY,
INLAND GAS CORPORATION,
KENTUCKY FUEL GAS CORPORATION,
Debtors.

VANSTON BONDHOLDERS PROTECTIVE COMMITTEE,
Petitioner,

against

LOUIS A. GREEN and ROBERT HEILBRUNN, Known in these Proceedings as the Green Committee and Morris Green,
Respondents.

VANSTON BONDHOLDERS PROTECTIVE COMMITTEE,
Petitioner,

against

CARL B. EARLY, DANIEL MATTHEWS, THOMAS MATTHEWS, JACK PATTON and P. G. MEADOR,
Respondents.

REPLY BRIEF OF PETITIONER

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Supreme Court of the United States

OCTOBER TERM, 1945

No. 848

No. 849

IN THE MATTER
of
AMERICAN FUEL & POWER COMPANY,
INLAND GAS CORPORATION,
KENTUCKY FUEL GAS CORPORATION,
Debtors.

VANSTON BONDHOLDERS PROTECTIVE COMMITTEE,
Petitioner,

against

LOUIS A. GREEN and ROBERT HEILBRUNN, Known in these Proceedings as the Green Committee and Morris Green,
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VANSTON BONDHOLDERS PROTECTIVE COMMITTEE,
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Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRITS OF CERTIORARI

The main contention in Respondents' briefs seems to be that no real question of choice of law is involved (Early et al. brief p. 6; Green Committee brief pp. 3, 7). This despite the fact that the Circuit Court of Appeals recog-

nized it could reach the question of the validity of the interest provision only after having ascertained "from what source we should seek controlling jurisprudence" (R. 381; 151 F. (2d) p. 475; Petition, p. 3).

Analysis of the instant case is not advanced by the attempt of respondent Green Committee to inject into the discussion diversity cases like *Ruhlin* vs. *New York Life Insurance Company*, 304 U. S. 202 (1937) and *Huddleston* vs. *Dwyer*, 322 U. S. 232 (1943). We submit that diversity cases differ from the instant bankruptcy case in that, as was said by this Court in *Holmberg* vs. *Armbrecht et al.*, decided February 25, 1946,

> "For purposes of diversity suits a Federal court is in effect 'only another court of the state' *Guaranty Trust Company* vs. *York, supra,* at 108."

In bankruptcy, where the jurisdiction of the Federal court is derived from another constitutional source*, the basic rule as to application of State law is different. See *American Surety Company* vs. *Sampsell*, decided February 25, 1946, where this Court said:

> "True, we stated in both *Prudence* opinions that the federal law governing distribution of a bankrupt's estate should be applied with 'appropriate regard for rights acquired under rules of state law'. But the extent to which state law is to be so considered is in the last analysis a matter of federal law."

The Early et al. brief seems to rely largely on a footnote in *Corn Exchange Bank* vs. *Klauder*, 318 U. S. 434, 437 (1942). The transaction there, however, did not have substantial contacts with more than one state, and thus did not raise the issue of the proper source for choice of law rules

* *Duggan et al.* vs. *Sansberry*, decided by this Court March 4, 1946.

in federal bankruptcy proceedings. The transaction in the instant case, on the other hand, aside from its contacts in *New York* and *Illinois*, involves distribution of cash accumulated by the Trustee through the operation of the mortgaged properties located in *Kentucky*. Furthermore, these respondents, by their emphasis on *Klaxon Co.* vs. *Stentor Co.*, 313 U. S. 487 (1941) (brief p. 11), and by their reliance on what they consider to be the Kentucky choice of law rule (brief p. 15), admit that a serious question of choice of law stands at the threshold of the case at bar.

Both respondents argue that there is no evidence of record that any bondholder demanded payment in Illinois. Anticipating this argument, we have pointed out in a footnote on page 14 of our original brief that "during all the period when these coupons became due the Company was either in Federal Equity Receivership or in 77-B or Chapter X proceedings." It is clear that by "these coupons" we meant the coupons involved in this litigation and both respondents have to admit that all of the coupons here involved fell due while the Company was in some kind of insolvency proceedings (Green Committee brief pp. 7, 8; Early et al. brief p. 8). The last semi-annual coupon paid was that due August 1, 1930, and receivership occurred December 2, 1930 (R. 303, 173).

The coupons here involved thus remained uncollected and the holder's right to demand payment in Illinois remained unimpaired. That some earlier coupons appear to have been paid prior to any insolvency proceeding, is immaterial. The record does not show that these earlier coupons were presented in New York, and respondents' attempt, in the face of a clear contractual provision establishing an

optional place of performance in Illinois (R. 354, 355, 360), to eliminate that State as one of those substantially connected with the transaction, finds no support in the record.*

Respondents (especially Early et al. brief p. 7) also argue that since New York is named ahead of Chicago in the contract, New York must be regarded as the sole place of performance for purposes of choice of law. This contention, which is asserted as "axiomatic" and based upon "the general rule", begs the principal question of the case, by simply assuming that under the applicable choice of law rule (which rule?) Illinois and Kentucky are not regarded as substantially connected with the transaction. Thus respondents are merely contending for a particular choice of law rule, while Petitioner is contending for another.

This choice of law question, since it arises in bankruptcy, should be controlled by the federal choice of law rule which was laid down in *Seeman* vs. *Philadelphia Warehouse Company*, 274 U. S. 403 (1927). Respondents seek to eliminate the latter case by pointing out that it was decided prior to *Erie* vs. *Tompkins*, 304 U. S. 64 (1938). Here again they beg the question. The *Seeman* case, which is a choice of law case (as distinguished from the purely local situation in *Corn Exchange Bank* vs. *Klauder, supra*) is still the law unless overruled by the choice of law case of *Klaxon Co.* vs. *Stentor Co.*, 313 U. S. 487 (1941), and

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* Since it was the promisee's option to select the place of performance, Illinois or New York, we fail to see how Section 356 of the *Restatement of the Law of Conflict of Laws* aids respondents. The applicable part of that section reads as follows:

> "(1) When a contract involves a promise to do one thing or another at the option of either party the place of performance is undetermined *until the option is exercised*, and it *then* becomes the place of performing the promise which is chosen by the party having the option." (Italics ours.)

whether the *Klaxon* case is applicable in bankruptcy is the very question presented by the instant case.

To our collection of lower court decisions showing confusion as to the source from which the applicable choice of law rule should be drawn in bankruptcy proceedings, there should be added a recent case from the Ninth Circuit, *Hamaker* vs. *Heffron*, 148 F. (2d) 981, 983, footnote 3 (C. C. A. 9, 1945), where the court, in determining the applicable choice of law rule, was guided by federal authorities. The Ninth Circuit and the Sixth Circuit are thus on opposite sides of the fence, whereas the Eighth Circuit seems to have wavered between the two positions.

Respectfully submitted,

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